



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

LEGAL BUREAU BULLETIN

Vol. 44, No. 1

January 2014

- I. **SUBJECT:** SEARCH WARRANTS
- II. **QUESTION:** MAY OFFICERS DETAIN OCCUPANTS INCIDENT TO A SEARCH WARRANT EXECUTION WHERE THE OCCUPANTS ARE FOUND BEYOND THE IMMEDIATE VICINITY OF THE SEARCHED PREMISES?
- III. **ANSWER:** NO. THE SUPREME COURT RECENTLY HELD IN BAILEY V. SUMMERS, 133 S. CT. 1031 (2013) THAT OFFICERS MAY ONLY DETAIN OCCUPANTS INCIDENT TO A SEARCH WARRANT EXECUTION WHERE THEY ARE FOUND WITHIN THE IMMEDIATE VICINITY OF THE SEARCHED PREMISES.

IV. DISCUSSION

A. Introduction

Officers executing a search warrant in a premises may detain occupants therein while they are conducting the search. The purpose of this rule is to further certain law enforcement interests, such as ensuring officer safety, ensuring the efficient completion of the search, and preventing flight. The United States Supreme Court recently clarified the geographic scope of this rule in Bailey v. Summers, 133 S. Ct. 1031 (2013), and held that officers may only detain occupants who they find within the immediate vicinity of the searched premises.

The purpose of this bulletin is to summarize this recent Supreme Court decision and explain its impact on the NYPD.

B. Facts

In Bailey v. Summers, police obtained a search warrant to search an apartment for a handgun. The warrant was obtained after a confidential informant observed a gun when he was in the apartment purchasing drugs. As the search unit began preparing for its search, two officers conducted surveillance in an unmarked vehicle outside of the residence. The surveilling officers observed two individuals leave the residence that was to be searched. Both individuals matched

the physical description of the person from whom the informant purchased drugs. The individuals entered a vehicle and drove away from the apartment. The surveilling officers followed the vehicle for about a mile. While they were following the vehicle, the search team began executing the search warrant. After following the individuals for a mile, the surveilling officers pulled them over and ordered them out of the car. After engaging in a conversation regarding their whereabouts, the officers handcuffed the two individuals and explained to them that they were being detained incident to the execution of a search warrant. The two individuals were then transported back to the scene of the search warrant execution, where a gun and drugs were found in plain view. The officers also discovered that one of the individual's keys, which were seized incident to arrest, opened the searched apartment. Both were arrested.

One of the arrestees moved to suppress his statements and keys as the product of an illegal seizure in violation of the Fourth Amendment. The District Court denied the motion, and the Circuit Court affirmed its denial. Both courts agreed that the detention of the arrestee was proper as it was incident to the execution of a search warrant. The United States Supreme Court granted certiorari, and reversed, holding that the officers' detention of the arrestee violated the Fourth Amendment.

C. Holding

In its decision, the Supreme Court announced a new rule regarding officers' authority to detain occupants of searched premises incident to the execution of a search warrant. Specifically, the Court held that officers' authority to detain individuals incident to a search warrant execution extends only to the immediate vicinity of the premises to be searched.

This decision clarifies the geographic scope of Michigan v. Summers, 452 U.S. 692 (1981), in which the Supreme Court held that officers have the authority to detain occupants of searched premises during the execution of a search warrant.¹ This authority is automatically triggered by the existence of a valid search warrant, and does not depend on whether the officers have any level of suspicion to believe the occupants have committed a crime. The Court explained that this rule was designed to protect the following law enforcement interests:

- Officer safety,
- Efficient completion of the search, including the prevention of the destruction, tampering, and hiding of evidence, and
- Prevention of flight.

The Supreme Court explained that these law enforcement objectives were not furthered in Bailey where the occupants (1) left the apartment before the search team arrived to execute the warrant, and (2) were detained one mile away from the searched premises. These interests were not advanced because:

¹ Reference Legal Bureau Bulletin, Volume 11, Number 8, for a more detailed discussion of the facts of Michigan v. Summers, 452 U.S. 692 (1981).

- Individuals not located at or near the scene of the search warrant execution do not pose a danger to officers located at the scene;
- Individuals not located at or near the scene cannot seek to hide, tamper with, or destroy evidence; and
- Individuals cannot flee from the scene if they are not, in fact, located at or near the scene.

This new rule limiting the geographic scope of officers' authority to detain occupants of searched premises ensures that occupants are only detained when they are found in such a location that they pose a real threat to the safe and efficient execution of the search warrant.

D. Other Considerations

a. Detaining Occupants Found Within the "Immediate Vicinity" of the Searched Location

Following the Supreme Court's decision in Bailey, the NYPD may now only detain occupants of searched premises where they are found in the immediate vicinity of the premises. In Bailey, the Court held that individuals, such as the occupants who were detained in that case, are not in the "immediate vicinity" of the searched premises where they are seized and detained one mile from the location to be searched. However, the Court did not further define what constitutes the "immediate vicinity" of searched premises. In addition, courts in this jurisdiction have not yet precisely defined the contours of the rule announced in this recent decision. The Bailey Court did, however, provide several factors for officers to consider in determining whether an occupant is in the "immediate vicinity" of searched premises, including:

- The lawful limits of the premises,
- Whether the occupant was within the line of sight of his dwelling, and
- The ease of reentry from the occupant's location.

In making this assessment, officers should also consider whether the law enforcement interests discussed above, such as officer safety, the efficient execution of the warrant, and prevention of flight, would be advanced by detaining an occupant found near the premises. Although the authority to detain an occupant incident to a warrant execution is automatic and need not be supported by specific reasons for believing these interests would be furthered, these interests may nevertheless be relevant in determining whether a person is in the "immediate vicinity" of the premises.

b. Detaining Occupants Versus Arresting Occupants

Officers must note the distinction between detaining an occupant before and during the search warrant execution and arresting a person after the warrant execution. The Bailey and Summers decisions discussed above solely give officers the authority to detain individuals prior to and during the execution of a search warrant. These cases do not give officers authority to arrest all occupants found at the scene of a search warrant execution. Even though officers do not

need probable cause to detain occupants found at the scene, officers must still have probable cause to arrest any of the occupants found at or in the immediate vicinity of the scene.²

V. CONCLUSION

The general rule from Michigan v. Summers that officers may detain individuals found at the scene of a search warrant execution for the duration of the execution remains intact. However, in light of the recent Bailey decision, officers may now only detain occupants who officers find in the immediate vicinity of the searched premises.

Any questions about the above-discussed principles should be directed to the Legal Bureau at (646) 610-5400.

This bulletin was prepared by
Katherine Byrns, Law Fellow, Legal Bureau

² Reference Legal Bureau Bulletin, Volume 43, Number 3, for a complete discussion of probable cause to arrest occupants found at the scene of a search warrant execution.